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MAILED
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OFFICE OF PETITIONS

In re Patent of Karaoguz et al. : DECISION ON REQUEST
Patent No. 7,584,359 : FOR RECONSIDERATION OF
Issue Date: September 1, 2009 : PATENT TERM ADJUSTMENT
Application No. 10/675,652 : and
Filed: September 30, 2003 : NOTICE OF INTENT TO ISSUE
Atty. Docket No. 15046US01 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 18, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred fifty (1250) days. The petition was timely filed within one month of the mailing of a Notice Concerting Improper Calculation of Patent Term Adjustment Based Upon USPTO Improperly Measuring Reduction Period under 37 CFR 1.704(c)(10), mailed May 18, 2010. The Office acknowledges receipt of the required \$200.00 fee under 37 CFR 1.18(e).

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted one thousand two hundred fifty (1250) days is **GRANTED TO THE EXTENT INDICATED HEREIN**.

Patentees argue that the Office miscalculated the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay"). Patentees indicate the period of B delay is 590 days, not 589 days, as the Office calculated.

Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends on the date the patent issues. In this case, a RCE was filed May 12, 2008. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The period of B Delay in this case is 589 days, which is the number of days beginning on

October 1, 2006, the day after the date three years after the application's filing date, and ending on May 11, 2008, the day before the date the RCE was filed.

Next, patentees argue that the Office miscalculated the period of reduction associated with the filing of a 312 amendment on July 6, 2009. Patentees argue the period of reduction is 9 days, not 10 days as the Office calculated.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The period of reduction is properly calculated as ten (10) days, counting the number of days in the period beginning on the date the 312 amendment was filed, July 6, 2009, and ending on July 15, 2009, the date the Office mailed a Response to Rule 312 Communication.

The correct patent term adjustment is 1248 days, which is the sum of 855 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 589 of B Delay minus 186 days overlap (from October 1, 2006 to April 4, 2007) reduced by 10 days for Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred forty-eight (1248) days.**

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,574,359 B2

DATED : September 1, 2009

DRAFT

INVENTOR(S) : Karaoguz et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 845 days

Delete the phrase "by 845 days" and insert – by 1248 days--